REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

En Banc

ALICIA O. FERNANDEZ, ANTHONY JOEY S. TAN, REYNALDO V. CESA and EDGARDO V. MARTINEZ,
Petitioners,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

CTA EB CRIM NO. 048
(CTA Crim Case No. O-133)

Present:

DEL ROSARIO, *PJ*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 27 2019

1:28 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court *en banc* is a Petition for Review[1] filed by petitioners Alicia O. Fernandez, Joey S. Tan, Reynaldo V. Cesa, and Edgardo V. Martinez against respondent People of the Philippines, within an extended period of time granted by the Court *en banc*,[2] seeking the reversal of the Decision dated September 20, 2017[3] (Assailed Decision) rendered by the First Division of this Court in CTA Crim. Case No. O-133, as well as the Resolution dated February 19, 2018[4] (Assailed Resolution) denying its motion for reconsideration.

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[1] *Rollo*, pp. 7-26 with Annexes "A" and "B", pp. 27-89.
[2] *Id.*, p. 6.
[3] *Id.*, pp. 38-89.
[4] *Id.*, pp. 90-96.

CTA Crim Case No. O-133 was previously consolidated with CTA Case No. 7819 entitled *"Kingson International Trading Corp. vs. Hon. Commissioner of Customs, et.al."* through a Resolution issued by the Court in Division, considering that the civil action is deemed instituted in the criminal action and by virtue of the fact that counsels for both parties interposed no objections thereto.[5]

The Assailed Decision was likewise appealed before the Court *en banc* by the petitioner in CTA Case No. 7819, docketed as CTA EB No. 1800, entitled *"Kingson International Trading Corp. vs. Hon. Commissioner of Customs, et.al."* dealing solely with the civil aspect of the case and the seizure of the subject shipment.

The present Petition for Review shall review, on appeal, the criminal liability of the accused that were found guilty by the Court in Division.

The dispositive portion of the Assailed Decision reads, as follows:

> "**WHEREFORE,** in light of the foregoing, accused **Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, and Edgardo V. Martinez,** however, are hereby found **GUILTY BEYOND REASONABLE DOUBT** of violating Section 3602, in relation to Section 2503 of the TCCP. They are hereby **SENTENCED** to suffer an indeterminate penalty of imprisonment of eight (8) years and one (1) day, as minimum, to ten (10) years, as maximum, for violating Section 3602, in relation to Section 2503 of the TCCP; and are **ORDERED** to each pay a fine of Eight Thousand Pesos (₱8,000.00) for violating Section 3602, in relation to Section 2503 of the TCCP.
>
> As regards accused **Jeffrey King and Roger M. Permejo,** they are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.
>
> Furthermore, pursuant to Section 2530, paragraphs (l) (3) and (4) of the Tariff and Customs Code of the Philippines, as amended, the subject shipment of 1,436 bundles of 10MM x 6M and 970 bundles of 12MM x 6M, or a total of 2,406 bundles of steel products subject of these consolidated criminal and civil cases are hereby **FORFEITED** in favor of the government to be disposed of in the manner prescribed by law.
>
> **SO ORDERED.**"[6]

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[5] CTA Case No. 7819, pp. 628 to 629.
[6] *Id.* at Note 1, p. 79.

The Assailed Resolution, on the other hand, in its dispositive portion, provides the following:

> "**WHEREFORE,** in the light of the foregoing considerations, the following Motions, namely: 1) ***Motion for Reconsideration*** filed by accused Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo Casa, and Edgardo Martinez; 2) ***Motion for Reconsideration*** filed by petitioner Kingson International Trading Corporation; and 3) ***Partial Motion for Reconsideration*** filed by the BOC, are hereby **DENIED** for lack of merit.
>
> **SO ORDERED."**[7]

The Parties

Petitioners Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, and Edgardo V. Martinez, together with Jeffrey King and Roger Permejo, are the accused charged for Violation of Section 3602 in relation to Section 2503 of the Tariff and Customs Code of the Philippines (TCCP) and Republic Act (RA) No. 7103 in CTA Criminal Case No. O-133. Accused Jeffrey King and Roger Permejo were acquitted by virtue of the Assailed Decision and are not parties to this appeal.

On the other hand, respondents People of the Philippines, are represented by the Office of the Solicitor General, with office address at 134 Amorsolo Street, Legaspi Village, Makati.

The Facts[8]

Accused Jeffrey King, Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, Edgardo V. Martinez, and Roger Permejo were charged before the Court in Division for violation of Section 3602 in relation to Section 2503 of the TCCP and RA 7103, under an Information[9] dated March 25, 2009, the accusatory portion of which reads:

> "That on or about the period 06 May 2006 to 21 July 2006, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and

[7] *Id.*, p. 89.
[8] As found by the First Division and as culled from the records of the case.
[9] Docket, CTA Crim. Case No. O-133, pp. 1-3, Information filed on March 30, 2009.

confederating with each other, with intent to defraud the government, did then and there knowingly, willfully, unlawfully, and feloniously import, misdeclare, misclassify and undervalue shipment said to contain 2,406 bundles of round steel bars, valued at Eighty Nine Million Seven Hundred Thirty Seven Thousand One Hundred Twenty Seven Pesos (Php89,737,127.00) but actually found as reinforced/deformed steel bars, through the use of falsified/spurious shipping documents to evade payment of correct and appropriate duties and taxes due thereon in the aggregate amount of Fifteen Million Eight Hundred Seventy Thousand Four Hundred Thirty Eight Pesos (Php15,870,438.00) to the damage and prejudice of the government.

CONTRARY TO LAW."

The Court in Division found the existence of probable cause for the issuance of a warrant of arrest against all the accused[10] and, consequently, issued a Warrant of Arrest on April 15, 2009.

Accused Jeffrey King and Roger Permejo both posted the required bail bond for their provisional liberty by way of cash bond in the amount of ₱120,000.00 each on April 30, 2009[11] and on May 5, 2009,[12] respectively.

Petitioners Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, and Edgardo V. Martinez filed an "Urgent Motion to Reduce Bail with Manifestation" on April 30, 2009[13], which was granted by the Court in Division in the Resolution[14] dated May 12, 2009. Subsequently, Petitioners posted their respective cash bond in the reduced amount of ₱80,000.00 on June 1, 2009.[15]

Upon arraignment, accused Jeffrey King,[16] and Roger Permejo,[17] together with Petitioners[18], each entered a plea of "NOT GUILTY" to the offense charged.

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[10] *Id.*, pp. 235 to 239.
[11] *Id.*, pp. 242 to 244; 248.
[12] *Id.*, pp. 253 to 256.
[13] *Id.*, pp. 250 to 251.
[14] *Id.*, pp. 287 to 288.
[15] *Id.*, pp. 290 to 291; pp. 293 to 297, 303 to 305, 308 to 312, 315 to 319, and 321.
[16] *Id.*, p. 339.
[17] *Id.*, p. 344.
[18] *Id.*, pp. 340-344.

The Preliminary Conferences were held on July 6, 2009,[19] July 27, 2009,[20] August 17, 2009,[21] September 28, 2009,[22] and February 24, 2010,[23] while Pre-Trial was conducted and terminated on March 1, 2010.[24] A Pre-Trial Order[25] dated March 8, 2010 was subsequently issued. The parties stipulated on the following facts and issues, to wit:

I. Statement of Facts

1. The identity of all the accused as named in the Information;

2. The jurisdiction of the Honorable Court over the case;

3. That the case was originally dismissed by the Department of Justice (DOJ) as per Resolution dated August 15, 2007 signed by State Prosecutor Ma. Emilia L. Victorio, as approved by Pedrito L. Rances, Asst. Chief State Prosecutor and approved by Chief State Prosecutor Jovencito R. Zuño.

II. Issues To be Resolved

A. Factual Issues

1. Whether or not accused in conspiracy with each other, knowingly, willfully and unlawfuly and feloniously misdeclared, misclassified and undervalued the shipment in the import entry.

2. Whether or not the copies of the documents submitted by the accused to the BOC to support the declaration in the import entry were falsified and/or spurious.

3. Whether or not Jeffrey King is the president of Kingson.

B. Legal Issues

1. Whether or not accused Jeffrey King, Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, Edgardo V. Martinez and Roger Permejo are criminally liable for violation of Section

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[19] *Id.*, pp. 350 to 351.
[20] *Id.*, pp. 382 to 384.
[21] *Id.*, pp. 441 to 443.
[22] *Id.*, pp. 457 to 459.
[23] *Id.*, pp. 562 to 576.
[24] *Id.*, p. 577.
[25] *Id.*, pp. 578 to 599.

3602 in relation to Section 2503 of the Tariff and Customs Code of the Philippines in relation to RA 7103

The following events precipitated the filing of the charges against the accused-petitioners:

On May 6, 2006, a shipment of 2,406 steel products on board the vessel S/S "Rich Ocean" with Registry No. PSI-001 arrived at the Port of Manila from the People's Republic of China.[26]

While the import entry was being processed at the Formal Entry Division (FED) of the BOC, the assigned customs examiner readjusted the declared customs value of subject shipment and imposed the additional duties and taxes in the amount of ₱544,264.00; hence, the total duties and taxes paid by Kingson Trading International Corporation (Kingson) amounted to ₱5,795,304.00.[27]

Before the shipment could be released from customs' custody, agents of the Customs Intelligence and Investigation Service (CIIS) received instruction to proceed to Pier 9 to verify that there was a huge discrepancy between the actual value of the subject shipment and the declared customs value as appearing on the import entry.[28]

On May 11, 2006, the Officer-on-Case (OOC) issued a memorandum to the CIIS Director stating that: "perusal of the entry reveals that the shipment was declared as 2,406 bundles round bars with the rate of 1%; however, it turns out that shipment were consist (sic) of rebars and carries a rate of 7%. Likewise, it was noted that the value utilized was only $0.26/kg, but should be $0.48/kg."[29]

Accordingly, the Director of the CIIS recommended the issuance of a Warrant of Seizure and Detention (WSD) against the entire shipment for alleged violation of Section 2503 of the TCCP in relation to Section 2503 thereof.[30]

On May 12, 2006, the District Collector, Port of Manila issued a WSD against the entire shipment, docketed as Seizure Identification No. 2006-747, with a directive to seize the articles.[31]

On May 24, 2006, Jeffrey N. Co filed a motion for intervention through his counsel, Atty. Armando S. Padilla. Movant averred that he is the owner of

[26] *Docket*, CTA Case No. 7819, pp. 199 to 206, 199, Joint Stipulation of Facts and Issues (JFSI), par. 1.
[27] *Id.*, pp. 199 to 206, 199 to 200, JFSI, par. 2.
[28] *Id.*, par. 3.
[29] *Id.*, par. 4.
[30] *Id.*, par. 5.
[31] *Id.*, par. 6.

1,000 tons of steel shipment subject of the aforesaid seizure proceedings as allegedly evidenced by a Memorandum of Agreement to Sell executed by and between Kingson and the same movant.[32]

On May 24, 2006, said movant manifested that seven hundred (700) bundles of the seized steel bars had already been delivered to his warehouse; hence, the same should be excluded from the coverage of the WSD order.[33]

On June 14, 2006, Kingson filed a Motion to Quash/Recall the WSD averring that there is no probable cause for its issuance. Kingson cited the alleged failure of the OOC to state the tariff classification of subject shipment and the failure to cite the specific subsection of Section 2530 of the TCCP allegedly violated. Further, Kingson advanced that if there were a misclassification, the same does not merit seizure of the shipment and that misclassification is not included in the violations cited under Section 2503 of the TCCP.[34]

During the hearing on the seizure case, the government prosecutor requested for a chemical analysis of the seized articles to be conducted by the MIRDC and that the results thereof be submitted to the Tariff Commission for proper classification of the seized articles.[35]

On July 20, 2006, District Collector Horacio P. Suansing, Jr. sent a letter to Dr. Agustin M. Fudolig, Chief, Analysis and Testing Division of the MIRDC, requesting assistance on the product testing and analysis for the purpose of determining the chemical composition of the aforesaid seized metal products as well as the proper tariff classification and rate of duty.[36]

On August 1, 2006, the Office of the District Collector received a letter dated July 28, 2006, allegedly coming from the Officer-in-Charge (OIC) of the MIRDC purportedly containing the chemical analysis report on the samples taken from the seized articles. However, the OIC of the MIRDC, Dr. Rio Pagtalunan, in a letter to the BOC, stated that the certificate of chemical analysis on subject metal product attached to the July 28, 2006 letter dated was not authentic and was not issued by the MIRDC.[37]

On February 12, 2007, Chairman Edgardo Abon of the Tariff Commission requested for samples of the seized articles aside from the chemical analysis report furnished them.[38]

[32] *Id.*, pp. 199 to 206, 200 to 201, JFSI, par. 7.
[33] *Id.*, par. 8.
[34] *Id.*, par. 9.
[35] *Id.*, par. 10.
[36] *Id.*, pp. 199 to 206, 201 to 202, JFSI, par. 11.
[37] *Id.*, par. 12.
[38] *Id.*, par. 13.

During the February 13, 2007 hearing on the seizure case, Kingson's counsel manifested that he will not object to the result of the chemical analysis submitted by the MIRDC. Kingson also manifested that the latest chemical analysis and the subsequent report furnished by the MIRDC were not requested by it.[39]

In the course of the trial, the government prosecutor sought the assistance of the Philippine Embassy in Beijing. On November 29, 2006, the Philippine Embassy in Beijing wrote China's General Administration of Customs, International Cooperation Department in Beijing Note Verbale No. S-36-0 to obtain certified true copies of the counterpart export documents used by the Chinese exporter.[40]

On December 13, 2006, the General Administration of Customs, the People's Republic of China (GAC-PRC) sent a response letter to the Philippine Embassy's request for investigative assistance relative to the aforesaid shipment of metal product coming from China.[41]

Meanwhile, on April 19, 2007, Atty. Nick Earle L. Hortillas, Chief Law Division of the BOC, received a letter dated April 18, 2007 from Acting Commissioner Marilou P. Mendoza of the Tariff Commission informing him that subject articles are classified in subheading 7213.10.10 (if in coils) or under subheading 7214.20.00 (if not in coils), both subheadings are with MFN rate of duty of 7% ad valorem and CEPT rate of duty of 3% ad valorem.[42]

Thus, on October 10, 2007, respondent District Collector issued his assailed Order, the dispositive portion of which reads:

> "WHEREFORE, in view of the foregoing, it is hereby ordered and decreed the 2,406 pieces of steel products be FORFEITED in favor of the government to be disposed in the manner provided for by law.
>
> Let copies of this Decision be furnished all parties and offices concerned for their information and guidance.
>
> SO ORDERED."[43]

On October 24, 2007, Kingson appealed the aforesaid Decision dated

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[39] *Id.*, par. 14.
[40] *Id.*, pp. 199 to 206, 202 to 203, JFSI, par. 15
[41] *Id.*, par. 16.
[42] *Id.*, par. 17.
[43] *Id.*, par. 18.

October 10, 2007 to respondent COC.[44] Two (2) days later, or on October 26, 2007, the government prosecutor filed a motion to correct typographical error in the Decision dated October 10, 2007 of the District Collector, Port of Manila to amend the decision to read, "2,406 Bundles of Steel Products" instead of "2,406 pieces of steel products."[45]

On November 21, 2007, the Legal Service of the BOC issued an order requiring Kingson to file comment on the motion to correct typographical error. On February 18, 2008, Kingson filed its comment interposing no objection to the said motion.[46]

Thereafter, respondent COC issued his assailed Decision, the dispositive portion of which reads:

> "WHEREFORE , premises considered, by virtue of the authority vested in me by law, it is hereby ordered and decreed that the subject importations be FORFEITED in favor of the government for violation of Section 2530 paragraph (f) and (1-3,4,5) of the Tariff and Customs Code of the Philippines, as amended to be disposed of in the manner provided by existing customs laws, rules and regulations pertinent thereto.
>
> Let copies of this Order be furnished all parties and offices concerned for their information and guidance.
>
> SO ORDERED."[47]

On August 7, 2008, Kingson filed its Petition for Review[48] before the Court in Division, docketed as CTA Case No. 7819. After Pre-Trial was terminated, the trial ensued.

On March 30, 2009, the aforequoted Information for the criminal charges were filed.[49]

On May 31, 2010, the criminal and the civil cases were consolidated by virtue of Section 11 of Rule 9 of the Revised Rules of the Court of Tax Appeals (A.M. No. 05-11-07-CTA).[50]

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[44] *Id.*, par. 19.
[45] *Id.*, pp. 199 to 206, 203 to 204, JFSI, par. 20.
[46] *Id.*, par. 21.
[47] *Id.*, par. 22.
[48] *Id.*, pp. 1 to 23.
[49] *Id.* at Note 9.
[50] *Id.* at Note 5, pp. 628 to 629.

On August 15, 2012, respondents in the civil case filed a Manifestation and Motion[51] which was noted by the Court in Division in the Resolution[52] dated August 31, 2012. In the said pleading, the Office of the Solicitor General stated that they will be adopting all the documentary evidence that the prosecution will offer in the criminal case.

To establish the culpability of all the accused in the criminal case, the prosecution presented thirteen (13) witnesses, namely: Marissa V. Curay, Welsie P. Lopez, Camilo Jolejole, Sambitore Lucman II, Edgar Alpano, Teodoro Sagaral, Bernardo Evangelista, William Ranaga, Roberto Malinao Cola, Assistant Secretary Jaime Victor B. Ledda, Wellington Yang Tong, Atty. Jenny Puno Diokno, and Rio S. Pagtalunan.

Upon completion of the oral testimonies of the foregoing witnesses, the prosecution in the criminal case filed its Formal Offer of Evidence[53] on August 31, 2012, proffering Exhibits "A" to "HHHHH". Meanwhile, the respondents in the civil case filed their Formal Offer of Evidence[54] through registered mail on August 31, 2012, a copy of which was received by the Court in Division on September 5, 2012.

In the Resolution[55] dated November 21, 2012, the Court in Division admitted Prosecution Exhibits "A" to "E3", "G" to "J", "N" to "V", "BBB" to "BBB-2", "EEE", "EEE-1", "EEE-3", "EEE-9", "FFF-1", "FFF-2", "FFF-2-a", "GGG", "GGG-1", "HHH", "HHH-1", "III-1", "KKK", "LLL", "MMM", "NNN", "OOO" to "OOO-3-a", "PPP" to "SSS-8", "TTT-1" to "TTT-12", "TTT-15", "TTT-16", "TTT-18" to "TTT-20", "TTT-22" to "TTT-25", "TTT-27" to "TTT-42", "TTT-44", "UUU" to "UUU-4", "UUU-7" to "UUU-9", "VVV" to "VVV-2-b " "WWW" to "ZZZ-2", "AAAA" to "GGGG", "HHHH-1", "HHHH-2", "JJJJ" to "LLLL-2", "NNNN" to "NNNN-11", "NNNN-13" to "NNNN-36", "OOOO" to "RRRR-1", "TTTT" to "TTTT-2", " XXXX" to "ZZZZ", "AAAAA" to "CCCCC-3" and "EEEE E."[56]

[51] *Id.*, Vol. IV, pp. 2327 to 2332.
[52] *Id.*, p. 2334.
[53] *Id.*, pp. 2335 to 2423.
[54] *Id.*, Vol. V, pp. 2827 to 2868.
[55] Criminal Docket, Vol. VI, pp. 3327 to 3337.
[56] Respondents' Exhibits "1" to "5-c", "7" to "10", "14" to "22", "54" to "54-b", "57", "57-a", "57-c", "57-i", "58-a", "58-b", "58-b-1", "59", "59-a", "60", "60-a", "61-a", "63", "64", "65", "66", "67" to "67-c-1", "68" to 71-h", "72-a" to "71-1", "72-o", "72-p", "72-r" to "72-t", "72-v" to "72-y", "72-aa" to "72-pp-1", "72-rr", "73" to "73-d", "73-g" to "73-i", "74" to "74-b-2", "75" to "78-b", "79" to "85", "86-a", "86-b", "88" to "90-b", "92" to "92-k", "92-m" to "92-jj", "93" to "96-a", "98" to "98-b", "101" to "103", "104" to "106-c" and "108".

On November 22, 2012, respondents in the civil case filed a Manifestation and Motion[57] praying that the exhibits formally offered by the prosecution in the criminal case be admitted.

Meanwhile, all the accused in the criminal case filed a Motion for Leave of Court to File Demurrer to Evidence[58] on November 28, 2012, to which the prosecution filed its Opposition to File Demurrer to Evidence[59] on December 11, 2012. In the Resolution[60] dated December 12, 2012, the Court in Division granted the said motion.

The accused in the criminal case filed their Demurrer to Evidence (With Leave of Court)[61] on December 27, 2012, to which the prosecution filed its Opposition/Comments (To the Demurrer to Evidence)[62] on February 21, 2013. Thereafter, accused filed their Reply to Opposition/Comments[63] on April 1, 2013, and accused's "Demurrer to Evidence (With Leave of Court)" was submitted for decision on May 17, 2013.[64] However, in the Resolution[65] dated August 14, 2013, the Court in Division denied the Demurrer to Evidence for lack of merit.

On September 18, 2013, the accused filed their Motion for Reconsideration.[66] The prosecution filed its Comment/Opposition to Motion for Reconsideration[67] on October 16, 2013, as well as a Supplement to Comments/Opposition to Motion for Reconsideration (dated September 16, 2013)[68] filed on October 17, 2013. Thereafter, accused filed their Reply to Comments/Opposition and to Supplement to Comments/Opposition[69] on November 4, 2013, while the prosecution filed its Rejoinder to Reply[70] on November 15, 2013.

In the Resolution[71] dated January 24, 2014, the Court in Division denied the Motion for Reconsideration filed by the accused for lack of merit.

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[57] Criminal Docket, Vol. VI, pp. 3338 to 3346.
[58] *Id.*, pp. 3347 to 3353.
[59] *Id.*, pp. 3356 to 3357.
[60] *Id.*, p. 3355.
[61] *Id.*, pp. 3358 to 3369.
[62] *Id.*, pp. 3422 to 3453.
[63] *Id.*, pp. 3464 to 3472.
[64] *Id.*, p. 3479.
[65] *Id.*, pp. 3482 to 3503.
[66] *Id.*, pp. 3504 to 3512.
[67] *Id.*, pp. 3521 to 3523.
[68] *Id.*, pp. 3525 to 3532.
[69] *Id.*, pp. 3542 to 3548.
[70] *Id.*, pp. 3557 to 3559.
[71] *Id.*, pp. 3575 to 3576.

Pursuant to the Resolution[72] dated January 29, 2014, counsel for the accused and Kingson filed a Joint Manifestation/Compliance[73] on February 10, 2014, stating that: 1) Kingson will present rebuttal evidence and would also adopt the evidence to be presented by the defense; 2) the defense is adopting the testimonies of Rogelio Caamic, who testified on August 24, 2009, and Roger Permejo, who testified on April 27, 2009 and May 25, 2009; and 3) the documentary exhibits identified by Rogelio Caamic and Roger Permejo are likewise adopted.

On February 26, 2014, defense counsel presented Roger Permejo, whose testimonies on April 27, 2009 and May 25, 2009 were adopted *in toto* as his direct testimony for the defense.[74]

On March 17, 2014, Kingson filed a Motion to Admit (Attached Motion to Adopt)[75] with attached Motion to Adopt[76] in the civil case. Respondents then filed their Comment[77] thereto on April 22, 2014. In the Resolution[78] dated May 30, 2014, petitioner's Motion to Adopt was granted, and was allowed to formally offer additional evidence in chief at a time coinciding with the filing of the Formal Offer of Evidence of all the accused in the criminal case.

To counter the prosecution's evidence, accused presented two (2) additional witnesses, namely: 1) Roger Caamic; and 2) Alicia O. Fernandez.

Kingson filed its Formal Offer (of Rebuttal Evidence)[79] on April 24, 2015 as well as an Amended Formal Offer (of Additional Evidence in Chief)[80] on May 25, 2015 in the civil case.

For its part, accused filed their Motion to Admit Formal Offer of Exhibits/Evidence with Request for Re-Marking/Marking,[81] with attached Formal Offer of Evidence/Exhibits with Request for Re-Marking/Marking[82] on June 15, 2015.

Respondents in the civil case filed their Comment[83] on June 15, 2015, while the prosecution in the criminal case filed their Comment/Opposition (Re:

[72] *Id.*, pp. 3583 to 3584.
[73] *Id.*, pp. 3585 to 3587.
[74] *Id.*, pp. 3616 to 3617.
[75] *Id.*, pp. 3624 to 3627.
[76] *Id.*, pp. 3628 to 3632.
[77] *Id.*, pp. 3652 to 3658.
[78] *Id.*, pp. 3676 to 3678.
[79] *Id.*, pp. 3834 to 3839.
[80] *Id.*, pp. 3872 to 3878.
[81] *Id.*, pp. 3892 to 3895.
[82] *Id.*, pp. 3896 to 3907.
[83] *Id.*, pp. 4012 to 4015.

Accused Formal Offer of Rebuttal Evidence dated April 20, 2015)[84] on November 5, 2015.

In the Resolution dated June 10, 2016,[85] the Court in Division admitted Exhibits "Q", "R", "S", "T", "U", "U-1", "V", "V-1", "V-2", "W", "X", "Y", "Z", "Z-1", "AA" and "BB", for Kingson in the civil case.

Kingson filed its Memorandum[86] on August 25, 2016, while respondents posted their "Memorandum"[87] on August 22, 2016 in the civil case. The consolidated cases were submitted for decision on October 26, 2016.[88]

On September 20, 2017, the Court in Division issued the assailed Decision[89] convicting Petitioners Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa, and Edgardo V. Martinez, but acquitting accused Jeffrey King and Roger Permejo for failure of the prosecution to prove their guilt beyond reasonable doubt.

On October 3, 2017, the convicted accused, Petitioners herein, filed a Motion for Reconsideration of the Assailed Decision. Kingson likewise filed a Motion for Reconsideration on October 5, 2017, assailing the ruling ordering the forfeiture of the shipment of 1,436 bundles of 10MM x 6M and 970 bundles of 12MM x 6M, or a total of 2,406 bundles of steel products subject of the consolidated criminal and civil cases. Both motions were denied by the Court in Division in a Resolution dated February 19, 2018.[90]

On March 16, 2018, Kingson timely posted its Petition for Review which was docketed as CTA EB No. 1800 assailing the portion of the Assailed Decision pertaining to the civil aspect of the case.[91] The Petition was given due course and, eventually, a Decision was rendered denying the Petition and affirming the Decision dated September 20, 2017 and the Resolution dated February 19, 2018 of the Court in Division.

Meanwhile, herein Petitioners timely filed their Petition for Review within an extended period granted by the Court *en banc* on March 23, 2018.[92]

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[84] *Id.*, pp. 4072 to 4077.
[85] *Id.*, pp. 4098 to 4100.
[86] *Id.*, Vol. VII, pp. 4129 to 4148.
[87] *Id.*, pp. 4149 to 4168.
[88] *Id.*, pp. 4215 to 4216.
[89] *Id.* at Note 3.
[90] *Id.* at Note 4.
[91] CTA EB No. 1800, docket, pp. 6-35.
[92] *Id.* at Note 1.

In a Resolution dated April 12, 2018,[93] Respondent was ordered to file its Comment to the Petition.

After being granted an extended period within which to file their Comment[94], Respondent timely posted its Comment on June 13, 2018, which the Court received on June 20, 2018.[95]

In a Resolution dated July 9, 2018, the parties were ordered to file their respective memoranda.[96] Petitioners filed their Memoranda on August 29, 2018[97], while Respondent filed a Manifestation and Motion (In Lieu of Memorandum) posted on August 23, 2018 which the Court *en banc* received on April 9, 2018, stating that it was adopting its Comment as its Memorandum.[98]

On September 27, 2018, the Court *en banc* issued a Resolution[99] submitting the case for decision.

The Assignments of Errors

In its Petition for Review, Petitioners assign the following errors to the Court in Division's assailed Decision and Resolution:

1) In ruling that the Petitioners are guilty beyond reasonable doubt;

2) In denying the Motion for Reconsideration of the Petitioners in the Assailed Resolution; and

3) In promulgating the Assailed Decision and Resolution which are contrary to the facts and evidence presented during the trial of the case and contrary to applicable jurisprudence, which, if considered favorably, would warrant the acquittal of Petitioners.

The Arguments of the Parties

Petitioners question the Court's ruling which found them guilty of violating Section 3602 of the TCCP and found that all the elements inherent in said crime were found to be present in the instant case.

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[93] *Id.*, pp. 91-92.
[94] *Id.*, pp. 96-97.
[95] *Id.*, pp. 98-121.
[96] *Id.*, pp. 124-125.
[97] *Id.*, pp. 130-154.
[98] *Id.*, pp. 155-158.
[99] *Id.*, pp. 128-129.

To be convicted of the crime charged, all the elements of the crime must exist, as follows: 1) there must be an entry of imported or exported articles; 2) the entry was made by means of any false or fraudulent invoice, declaration, affidavit, letter or paper; and, 3) there must be intent to avoid payment of taxes.

While Petitioners admit that the first element exists, as there was clearly an import entry, they deny the existence of the second and third elements. Petitioners argue that the Court in Division failed to consider the fact that when the commercial documents (e.g. Import Entry, Commercial Invoice, Packing List, Sales Contract, and Bill of Lading) were sent to Kingson before the Import Entry was accomplished in May 2006, the Counterpart Export Documents provided by the GAC-PRC were not yet in existence.

Petitioners further argue that, as testified to by Petitioner Alicia O. Fernandez, the commercial documents sent by the foreign supplier were the ones appended to the Import Entry and, at the time, they had no reason to doubt the authenticity of the documents. Moreover, at the time the commercial documents were sent, the actual shipment had not yet arrived in the Philippines for the Petitioners to make a visual comparison thereof. Thus, there was no discrepancy between the commercial documents sent and those attached to the Import Entry.

Petitioners also argue that with respect to the three (3) accused namely, Anthony Joey S. Tan, Reynaldo V. Cesa and Edgardo V. Martinez, the prosecution failed to show the existence of conspiracy because it was not able to show any actuations on their part to prove such. Petitioners claim that they were convicted or found guilty based on their mere membership in Kingson. Accused-petitioners now seek relief from the Court *En Banc* for the reversal of the assailed Decision and Resolution and for their acquittal from the crime charged.

As regards the third element, Petitioners argue that as the importation of the subject shipment passed through the normal channels of the BOC, there was no intent to avoid the payment of taxes, nor was there any willful misdeclaration, misclassification or undervaluation of the subject shipment.

On the other hand, Respondent submits that the Court in Division correctly convicted Petitioners for violation of Section 3602 in relation to Section 2503 of the TCCP. Respondent takes exception to the claim of Petitioners that they should not be convicted because at the time of filing of the import entry, the counterpart export documents coming from GAC-PRC were not yet in existence.

Respondent argues that this theory is a clear misapprehension of the provisions of Sections 2503 and 3602 of the TCCP. Section 3602, as amended, enumerates the various fraudulent practices which may be committed, one of which is the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practice.

Respondent contends that, contrary to the claims of Petitioners, the second and third elements are likewise present in this case. That the importation of the subject shipment was effected through false declaration and fake commercial documents to evade payment of the correct duties and taxes are confirmed by the counterpart export documents by the GAC-PRC, such as the the invoice,[100] customs clearance bill,[101] packing list,[102] and sales invoice[103] provided by China, the country of origin of the shipment. A comparison between the foregoing and the invoice and commercial documents submitted to the BOC in support of the import shows a discrepancy in the description of the articles imported in order to secure a lower rate of duty of 1% instead of 7%. More importantly, Petitioners have not presented any evidence to belie the authenticity of the counterpart export documents supplied by the Chinese government.

As to the culpability of the Petitioners, Respondent points to the alleged fact that they are all responsible officers of Kingson, the company that imported the subject goods using falsified or fraudulent commercial documents, hence they must be responsible for the offense charged and must be penalized for the crime of importing the subject shipment using falsified or spurious documents to evade the payment of correct duties and taxes.

<u>The Ruling of the Court</u>

The relevant law under which the accused-petitioners are charged is Section 3602 in relation to Section 2503 of the TCCP, quoted as follows:

> "Section 3602. *Various Fraudulent Practices Against Customs Revenue.* – Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper, or by any means of any false statement, written or verbal, by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof upon a false classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon exportation of merchandise, or makes or files any affidavit, abstract, record, certificate or other document with a view to securing the payment to himself or others

[100] Exhibit "YYY" to "YYY-2".
[101] Exhibit "AAAA" to "AAAA-2".
[102] Exhibit "ZZZ" to "ZZZ-2".
[103] Exhibit "XXX" to "XXX-2".

of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission, shall for each offense, be punished in accordance with the penalties prescribed in the preceding section."

"Section 2503. *Undervaluation, Misclassification and Misdeclaration in Entry.* – When the dutiable value of the imported articles shall be so declared and entered that the duties, based on the declaration of the importer on the face of the entry would be less by ten percent (10%) than should be legally collected, or when the imported articles shall be so described and entered that the duties based on the importer's description o the face of the entry would be less by ten percent (10%) than should be legally collected based on the tariff classification, or when the dutiable weight, measurement or quantity of imported articles is found upon examination to exceed by ten percent (10%) or more than the entered weight, measurement or quantity, a surcharge shall be collected from the importer in an amount of not less than the difference between the full duty and the estimated duty based upon the declaration of the importer, nor more than twice of such difference: *Provided,* That an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement or quantity declared in the entry, and the actual value, weigh, quantity, measurements shall constitute a *prima facie* evidence of fraud penalized under Section 2530 of this Code: *Provided,* further That any misdeclared or undeclared imported article/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provisions of this Code.

When the undervaluation, misdescription, misclassification or misdeclaration in the import entry is intentional, the importer shall be subject to the penal provision under Section 3602 of this Code."

Petitioners maintain that not all the elements of the crime charged under Section 3602 of the TCCP were proven to exist hence they should have been acquitted by the Court in Division.

Petitioners cited a valid point in that all the elements of the crime charged must be proven by the prosecution beyond reasonable doubt to justify conviction. In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: first, the fact of the commission of the crime charged, or the presence of all the elements of the offense, and second, the fact that the accused was the perpetrator of the crime.[104]

In *People vs. Jardeleza*[105], the Supreme Court elaborated on the various types of fraudulent practices covered by Section 3602 of the TCCP, thus:

> "The provision enumerates the various fraudulent practices against customs revenue, such as the entry of imported or exported articles by means of any false or fraudulent invoice, statement or practice; the entry of goods less than the true weight or measure; or the filing of any false or fraudulent entry for the payment of drawback or refund of duties."

The charges against Petitioners involve the willful importation of goods through the use of false statements or fraudulent practice to evade the payment of the correct and appropriate duties and taxes, the elements of which may be broken down as follows:

1. There must be an entry of imported or exported articles/goods;

2. The entry was made by means of any false or fraudulent invoice, declaration, affidavit, document or fraudulent practice; and,

3. There must be intent to avoid payment of taxes.

In the same case of *People vs. Jardeleza,* the element of fraud as contemplated in Section 3602 of the TCCP is described more specifically as follows:

> "The fraud contemplated by law must be intentional fraud, consisting of deception, willfully and deliberately dared or resorted to in order to give up some right. The offender must have acted knowingly and with the specific intent to deceive for the purpose of causing financial loss to another; even false representations or statements or omissions of material facts come within fraudulent intent. The fraud envisaged in the law includes the suppression of a material fact which a party is bound in good faith to disclose. Fraudulent nondisclosure and fraudulent concealment are of the same genre."

[104] *Guilbemer Franco vs. People of the Philippines*, G.R. No. 191185, February 1, 2016.
[105] G.R. No. 165265, February 6, 2006.

In addition, the aforequoted Section 2503 of the TCCP provides that an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty (30%) between the value, weight, measurement or quantity declared in the entry, and the actual value, weight, quantity and measurements shall constitute a *prima facie* evidence of fraud.

We now proceed to analyze whether the elements of the crime were duly proven.

As the Petitioners already admitted the existence of the import entry, we need not belabor the first element.

As regards the second element, the Court *en banc*, has previously ruled in CTA EB No. 1800 which dealt with the civil aspect of the case that the entry of the importation was made on the basis of false declarations and fake commercial documents in order to justify its intentional undervaluation and misdeclaration.

The relevant portion of the Decision in CTA EB No. 1800 is quoted hereunder:

> "Close scrutiny of the invoice and commercial documents submitted by Kingson to the BOC in support of the Import Entry Declaration for subject shipment and the counterpart export documents provided by the General Administration of Customs of the People's Republic of China, as certified by the Philippine Embassy in Beijing, China, shows the following:[106]

Description	**Import Entry & Internal Revenue Declaration and attached documents filed with the Bureau of Customs**	**Counterpart Export Documents provided by the General Administration of Customs of the People's Republic of China as certified by the Philippine Embassy in Beijing, China**
Bill of Lading No.	**B/L No. ST001** [Import Entry and Bill of Lading]	**ST001** [Customs Clearance Bill]
Name of Vessel	**RICH OCEAN** [Import Entry and Bill of LadinQ]	**RICH OCEAN** [Customs Clearance Bill]
Shipper's Name	**Tianjin Mei Hua Trade Co., Ltd.** [Import Entry, Packing List, and Bill of Lading]	**Tianjin Mei Hua Trade Co., Ltd.** [Sales Contract, Invoice, Packing List and Customs Clearance Bill]

[106] *Id.* at Note 8, pp. 16-17, Resolution promulgated on August 14, 2013.

Consignee	**Kingson International Trading Corporation** [Import Entry, Invoice, Packing List, Sales Contract, and Bill of Lading]	**Solid Sea Products H.K.** [Sales Contract, Invoice, and Packing List]
Transport Details	**From Xingang, China to Manila, Philippines** [Import Entry, Packing List, and Bill of Lading]	**From Xingang, China to Manila, Philippines** [Sales Contract, Invoice, Packing List and Customs Clearance Bill]
Total Weight of Cargo	**3,009,800 kilograms** [Import Entry, Packing List, and Bill of Lading]	**3,009,800 kilograms** [Sales Contract, Invoice, Packing List and Customs Clearance Bill]
Description of the Imported Shipment	**2,406 Bundles of STEEL PRODUCTS (SCM 440 ROUND BAR)** [Import Entry, Invoice, Packing List and Bill of Lading]	**1,436 bundles of 10MM x 6M and 970 bundles of 12MM x SM, or a total of 2,406 bundles.** [Packing List]
Value of Shipment	**US$692,254.00** [Import Entry, Invoice, and Sales Contract]	**US$1,281,271.86** [Sales Contract, Invoice, Customs Clearance Bill]

We agree and concur with the observations made by the Court in Division in perusing both sets of documents, that:

1. The counterpart export documents provided by the Chinese Government and the commercial documents submitted by Kingson in support of the Import Entry it filed relating to the said shipment reveals that they refer to the same shipment of 2,406 bundles of steel products;

2. The export documents provided by the Government of China, the country of origin of subject shipment confirmed that bundles steel products were shipped on board the vessel "Rich Ocean" under Bill of Lading No. ST001 from Xingang, China to South Harbor, Manila under Sales Contract dated April 5, 2006 from Tianjin Mel Jia Hua Trade Company, Ltd.;

3. The Bill of Lading Number tallies with what Kingson declared in its import declaration. The total weight of the shipment as confirmed by China is 3,009.80 metric tons, which matches with the import declaration and import documents of Kingson; and

4. While the packing list, contract and invoice provided by China showed the description of the shipment as "Steel

> Products 10MMx6M and 12MMx6M," this description was altered and changed to "SCM 440 Round Bars" by Kingson in the Import Entry precisely to secure a lower rate of duty of 1% instead of 7%.[107]
>
> It appears that the total selling price or consideration of the shipment as appearing in the packing list, contract and invoice provided by China was purposely altered from US$ 1,281,271.86 to US$ 692,254.00 to reduce the amount of duty that Kingson should have paid for subject shipment. As previously observed, no evidence has been adduced by Kingson to explain this alteration on the documents provided by the foreign supplier.
>
> Indubitably, the importation of subject shipment was effected on the strength of false declaration and fake commercial documents in gross violation of Section 2530, paragraph l (3 and 4) of the TCCP, as amended. The intention to undervalue and misdeclare the subject shipment on the basis of these false or fictitious documents is as plain as day."

We agree with the Court in Division's disquisition on the probative value given to these two sets of documents, thus:[108]

> "When confronted by two sets of documents, more credence is given to that acquired from official sources, and duly authenticated by the respective authorities from both the foreign and local government.
>
> In contrast to the documents presented by the prosecution, the accused failed to present any evidence to prove the authenticity of the documents appended to the Import Entry, aside from their bare assertions that these documents came from their foreign supplier. If it were true, that the documents they filed before the BOC were authentic, and came directly from Tianjin Mei Hua Trade Co., Ltd, accused should have secured a certification from the said supplier, attesting that it made a mistake in the initial documents sent to Kingson. This is especially true, considering that accused Alicia O. Fernandez herself testified that they have already had previous transactions with Tianjin Mei Hua Trade Co., Ltd.[109]

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[107] Exhibit "88", supra.
[108] *Id.* at Note 1, p. 77.
[109] Exhibit "30" for the accused, Exhibit "AA" for the petitioner, Criminal Docket, Vol. VI, pp. 3732 to 3739, p. 3734.

The failure of accused to rebut the official and authenticated documents presented by the prosecution belies their claim of good faith in their reliance on the documents allegedly sent by their foreign supplier. They should have presented evidence to support their claim.[110]

In addition, this Court notes that in the Memorandum of Agreement to Sell dated April 7, 2006,[111] as well as the receipt dated May 9, 2006,[112] the Agreement does ***not*** involve "Steel Products (SCM 440 Round Bar)." Instead, the coverage of the said Memorandum are: *"(a) 700.00 Metric Tons or 200,000 pieces, more or less of Grade 230 (Structural Grade) 10mm/3.5 kilos more or less at Php91.66/piece; and (b) 300.00 Metric Tons or 60,000 pieces, more or less of Grade 230 (Structural Grade) 12mm/5.0 kilos more or less at Php132.13/piece."*[113] **This further bolsters the fact that the subject shipment definitely involves the importation of 10mmx6m and 12mmx6m bars, contrary to the claim of the accused that the shipment was supposed to contain SCM 440 Round Bars.**

Undoubtedly, there is a clear case of willful misdeclaration, misclassification and undervaluation of the subject shipment of steel bars on the part of the accused." *(Emphasis supplied)*

To seal the conclusion of guilt, the misdeclaration and undervaluation in weight, measurement or quantity was found to be more than 30% between the value, weight, measurement or quantity declared in the entry, and the actual value in weight, quantity or measurement declared in the entry which constitutes a *prima facie* evidence of fraud.

The Court in Division held that the shipment consisting of "2,406 steel products" was intentionally undervalued and misdeclared to evade payment of the correct duties and taxes, to wit:[114]

"Corollary thereto, Section 2503 provides that an undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) between the value, weight, measurement or quantity declared in the entry, and the actual value, weight, quantity, or measurement shall constitute a *prima facie*

[110] *Angel O. Rodriguez vs. Court of Appeals*, G.R. No. 115218, September 18, 1995.
[111] Exhibits "OOO" to "OOO-1-a."
[112] Exhibit "OOO-2" to "OOO-2-a."
[113] Exhibit "OOO" and "OOO-2".
[114] *Id.* at Note 1, p. 78.

> evidence of fraud penalized under Section 2530 of the TCCP. Moreover, any misdeclared or undeclared imported articles/items found upon examination shall *ipso facto* be forfeited in favor of the Government to be disposed of pursuant to the provisions of the TCCP.
>
> In this case, the prosecution has sufficiently established that there was **an undervaluation in the amount declared in the Import Entry (US$692,254.00) by more than 30% of the actual value based on the amount stated in the counterpart documents (US$1,281,271.86)** presented by the prosecution. This, in turn, constitutes *prima facie* evidence of fraud penalized under Section 2503 of the TCCP." *(Emphasis supplied)*

It becomes quite obvious that Petitioners, as responsible officers of Kingson, intentionally misdeclared the classification of the subject shipment, through its authorized customs broker, as falling under Tariff Classification at heading No. 7228.60 at 1% rate of duty. A chemical analysis of the same steel product by the Tariff Commission, the samples of which were taken in the presence of both parties, shows that the actual classification of the same shipment falls under TH 7214.2000 at 7% rate of duty. It is also to be noted that Petitioners failed to contravene the findings of the Tariff Commission relative to the proper classification of the same shipment.

We therefore uphold the Court in Division's finding on this matter. Clearly, the existence of the second and third elements have been established.

The remaining issue left for determination is the culpability of the Petitioners of the crime charged under Section 3402 of the TCCP.

Petitioners assert that the prosecution failed to prove conspiracy to make them liable for the crime charged as it was not able to show any actuations on their part to prove conspiracy.

We disagree.

The evidence on record shows that the Petitioners were the officers of Kingson at the time the crime was committed. The General Information Sheet (GIS) of Kingson, submitted as Exhibit "PPP", identifies the accused Reynaldo V. Cesa as President, Anthony Joey S. Tan as the Vice-President, Edgardo V. Martinez as Treasurer and Alicia O. Fernandez as its Corporate Secretary.

In addition, the Importer's Accreditation Profile[115] and Application for Registration[116] submitted by Kingson before the BOC, states that accused Reynaldo V. Cesa is the President; Edgardo V. Martinez is the Director, and Alicia O. Fernandez is the Import/Export Manager of the said corporation.

As a juridical entity, Kingson has a separate and distinct personality from its directors and corporate officers. However, Kingson can only execute its corporate powers through its board of directors and responsible officers. *We* find no error in the Court in Division's conclusion that Petitioners, by virtue of their respective offices and by the very nature of their functions, must necessarily have had knowledge of the transactions entered into by Kingson in the ordinary course of its business operations.

In *Alfredo Ching v. Secretary of Justice,*[117] the liability of corporate officers if the crime is committed by a corporation was discussed by the Supreme Court, thus:

> "If the crime is committed by a corporation or other juridical entity, **the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the nature of the crime and the penalty therefor.** A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment. However, a corporation may be charged and prosecuted for a crime if the imposable penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined.
>
> A crime is the doing of that which the penal code forbids to be done, or omitting to do what it commands. A necessary part of the definition of every crime is the designation of the author of the crime upon whom the penalty is to be inflicted. When a criminal statute designates an act of a corporation or a crime and prescribes punishment therefor, it creates a criminal offense which, otherwise, would not exist and such can be committed only by the corporation. But when a penal statute does not expressly apply to corporations, it does not create an offense for which a corporation may be punished. On the other hand, if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty therefor to be suffered by the officers, directors, or employees of such corporation or other persons responsible for the offense, only such individuals will suffer such penalty. **Corporate**

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[115] Exhibits " FFF-1" and "14".
[116] Exhibit "FFF-2".
[117] G.R. No. 164317, February 6, 2006.

> **officers or employees, through whose act, default or omission the corporation commits a crime, are themselves individually guilty of the crime.**
>
> The principle applies whether or not the crime requires the consciousness of wrongdoing. **It applies to those corporate agents who themselves commit the crime and to those, <u>who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act.</u>** Moreover, all parties active in promoting a crime, whether agents or not, are principals. Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact." *(Emphasis supplied)*

The Supreme Court ruled that the liability of the officers of a corporation attaches when he or she assents to a patently unlawful act of the corporation.[118] In *Republic Gas Corporation, et. al, vs. Petron Corporation, et.al.,*[119] cited in the Assailed Decision, the Supreme Court ruled that the corporate officers whose **act, default or omission** caused a corporation to commit a crime may themselves be individually liable for the crime.

In the *Republic Gas Corporation* case, the Supreme Court discussed the liability of corporate officers, thus:

> "Petitioners, being corporate officers and/or directors, **through whose act, default or omission the corporation commits a crime, may themselves be individually held answerable for the crime**. Veritably, the CA appropriately pointed out that petitioners, **<u>being in control and supervision in the management and conduct of the affairs of the corporation, must have known or are aware</u>** that the corporation is engaged in the act of refilling LPG cylinders bearing the marks of the respondents without authority or consent from the latter which, under the circumstances, could probably constitute the crimes of trademark infringement and unfair competition. **The existence of the corporate entity does not shield from prosecution the corporate agent who knowingly and intentionally caused the corporation to commit a crime.** Thus, petitioners cannot hide behind the cloak of the separate corporate personality of the corporation to escape criminal liability. **A corporate officer**

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[118] *Tramat Mercantile, Inc. and Daivd Ong vs. Court of Appeals,* G.R. No. 111008, November 7, 1994.
[119] G.R. No. 194062, June 17, 2013.

cannot protect himself behind a corporation where he is the actual, present and efficient actor."

We agree with the Court in Division's finding that despite there being no direct evidence presented by the prosecution to directly link the responsible corporate officers for the crime committed by the corporation, there is a showing of: 1) the undeniable commission of the crime; 2) the pecuniary advantage the corporation would gain had the falsified documents been taken at face value; and 3) a lack of repudiation by the responsible officers of the unlawful acts already committed, or, at the very least, a showing of the effort undertaken to make sure that the documents sent in advance to be appended to the Import Entry matched their order.

Human nature dictates that, when a high value transaction is at stake, such as the subject shipment, persons in positions of responsibility, such as Petitioners, would make doubly sure that the *I*'s are dotted and the *T*'s are crossed. This, Petitioners inevitably failed to do which stains their claim of good faith -- or even their claim of unintended professional apathy -- in a way that this Court cannot ignore.

In *Rodriguez vs. Court of Appeals,*[120] which involved textile from the Manila International Container Port that passed through the Customs house and was released by means of a Special Permit to Transfer purportedly accomplished and signed by the authorized Customs personnel later found to be falsified, the Supreme Court said:

> "Petitioners do not dispute the appellate court's finding that the textile was imported and that it passed through the Customs house under fraudulent circumstances. They, however, claim that it erred in convicting them when, by its own finding, petitioners had no actual participation in the release of said textile and the diversion of the container van to Quezon City.
>
> While it is true that the evidence does not show their participation in the release of the smuggled cargo, petitioners were actually found to have been in possession of the textile after its release. Some of the textile materials were found in Eulogio's stock room and in Tomas Ngo's bodega and the others in the delivery van where Jose and Angel were riding. Petitioners have never disputed but in fact admitted their possession of the textile and as a result of this admission, they are presumed to have been engaged in smuggling pursuant to the last paragraph of Section 3601 of the Code. **The burden of proof shifted to them. To rebut this**

[120] G.R. No. 115218 September 18, 1995.

> **presumption, it is not enough for petitioners to claim good faith and lack of knowledge of the unlawful source of textile. Petitioners should have presented evidence to support their claim and satisfy the court of their non-complicity.**
>
> **Petitioners failed to sufficiently explain how they came into possession of the smuggled textile.** They ascribe all their acts to Mr. Pena who has long since died and to Rolly who has since disappeared, if he ever existed. The testimony of a witness as to what he heard other persons say about certain facts in dispute is hearsay evidence and cannot be admitted.[121] Moreover, petitioners' version of their participation is self-serving, strains the imagination and taxes our credulity.
>
> x x x x x x x x x
>
> **Indeed, petitioners' claim of good faith and lack of knowledge of the origin of the textile cannot stand in the light of contrary evidence.** As the lower courts well found, petitioners have miserably failed to rebut the presumption that they were engaged in smuggling at the time they were apprehended. **Evidence, to be believed, must proceed not only from the mouth of a credible witness but must be credible in itself as when it conforms to the common experience and observation of mankind.**[122]" *(Emphasis supplied)*

Similar to the cited case, Petitioners have failed to rebut the presumption that they assented or even permitted the falsification to happen, not only of the documents appended to the Import Entry, but also of the falsified chemical analysis of the seized steel bars purportedly coming from the MIRDC in a bid to secure a lower Tariff Classification rate.

There is more.

As the Court in Division noted, Petitioner Fernandez testified that when the defect in the Memorandum of Agreement to Sell between Kingson and Jeffrey N. Co was discovered -- wherein Jeffrey King was erroneously referred to as President of Kingson, the corporate officers of Kingson, composed of Petitioners, had a meeting to rectify the same. An Addendum of Memorandum of Agreement to Sell was therefore executed to correct the error and accordingly reflect that Jeffrey King was not the President of Kingson.

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[121] *Id.* citing *San Sebastian College v. Court of Appeals*, 197 SCRA 138 [1991]; *People v. Tiozon*, 198 SCRA 368 [1991].
[122] *Id.* citing *People v. Jalon*, 215 SCRA 680 [1992]; *Magat v. People*, 201 SCRA 21 [1991]; *People v. Marti*, 193 SCRA 57 [1991].

We quote with approval, the findings and conclusion of the Court in Division, thus:

> "From the foregoing, it is evident that accused Cesa, Tan, Martinez and Fernandez undoubtedly knew of the importation of steel from China. Despite their knowledge of the transaction, they failed to perform acts, such as directing their customs broker, to ensure that the importation is made in accordance with law. Needless to say, the amount involved in this case is too substantial for the said accused - responsible corporate officers of Kingson - to be unaware of and feign ignorance of its business undertaking.
>
> In fine, accused Cesa, Tan, Martinez and Fernandez, are the responsible corporate officers of Kingson who exercise direct control and supervision in the management and conduct of Kingson's affairs and who, by virtue of their respective positions, may not be considered as unaware that Kingson would misdeclare, misclassify and undervalue its shipment of steel bars in violation of Section 3602, in relation to Section 2503, of the TCCP. As responsible corporate officers, they are criminally liable for the crime either by assenting to the commission thereof by Kingson or by being grossly negligent in directing Kingson's affairs."
>
> Thus, accused Reynaldo V. Cesa, Anthony Joey S. Tan, and Edgardo V. Martinez, together with accused Alicia O. Fernandez, are guilty beyond reasonable doubt of the crime charged against them."

In sum, Petitioners have not presented any argument persuasive enough to disturb the findings and conclusions of the Court in Division.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The assailed Decision dated September 20, 2017 and the assailed Resolution dated February 19, 2018 are **AFFIRMED *in toto*.**

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

With Concurring and Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ALICIA O. FERNANDEZ, ANTHONY JOEY S. TAN, REYNALDO V. CESA and EDGARDO V. MARTINEZ, *Petitioners,*	**CTA *EB* Crim. No. 048** (CTA Crim. Case No.O-133)
	Present:
-versus-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
PEOPLE OF THE PHILIPPINES, *Respondent.*	
	Promulgated: SEP 27 2019 1:28 p.m.

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CONCURRING AND DISSENTING OPINION

MANAHAN, J.:

I concur with my esteemed colleagues in their conclusion that the importation of the subject shipment was conducted in violation of Section 3602 in relation to Section 2503 of the Tariff and Customs Code of the Philippines (TCCP) because it has been established firmly by the prosecution that all the elements constitutive of the crimes specified therein are present. Consequently, I assent to the judgment of forfeiture of the subject shipment consisting of 1,436 bundles of 10MM x 6M and 970 bundles of 12MM x 6M, or a total of 2,406 bundles of steel products.

As to the allegation of conspiracy as the means by which the petitioners committed the crime under Section 3602 in relation to Section 2503 of the TCCP, I register my dissent to the ruling of the majority, and opine that conspiracy was not proven beyond reasonable doubt. Under the principle that conspiracy requires the same degree of proof required to establish the crime beyond reasonable doubt,[1] the evidence submitted by the prosecution is not strong enough to support its conclusions. The elements of conspiracy, as held in the case of *People of the Philippines v Reyderick Lago*[2] are the following:

(1) two or more persons came to an agreement,
(2) the agreement concerned the commission of a felony, and
(3) the execution of the felony was decided upon.

In the Decision promulgated by the Court in Division, accused Jeffrey King and Roger M. Permejo were acquitted for failure of the prosecution to prove their guilt beyond reasonable doubt but accused Alicia O. Fernandez, Anthony Joey S. Tan, Reynaldo V. Cesa and Edgardo V. Martinez (collectively referred to as "the accused") were convicted because as the responsible corporate officers of Kingson International Trading Corporation (Kingson), they exercised direct control and supervision in the management and conduct of the latter's affairs including importation of goods.

The conclusion of conspiracy among the convicted individuals stemmed from two sets of circumstantial evidence, to wit: 1) that by virtue of their respective positions they could not have been unaware of the misdeclaration, misclassification and undervaluation of the subject shipment and 2) the absence of evidence showing that the responsible officers repudiated the unlawful acts already committed and their failure to conduct an appropriate investigation against accused Alicia O. Fernandez who is Kingson's corporate secretary and import/export manager and as such, was the person who filled up and signed the import entry. These circumstantial evidence coupled with the fact that the correction/amendment of the Memorandum of Agreement (MOA) to Sell executed by Kingson and Jeffrey Co was decided and made during a meeting of the corporate officers composed of accused Fernandez, Cesa, Tan and Martinez such that the latter officers could not have been unaware of the discrepancy between the items sold under the MOA to Sell and the items described in the import documents.

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[1] Edwina Rimando y Fernando vs. People of the Philippines, G.R. No. 229701, November 29, 2017.
[2] G.R. No. 121272, June 6, 2001.

The aforesaid circumstantial evidence failed to prove that (1) they came to an agreement; (2) the agreement concerned the commission of the crime, i.e., misdeclaration of the imported goods under Section 3602 in relation to Section 2503 of the TCCP , as alleged in this case; and (3) the execution of the said crime was decided by the accused. Nowhere in the case records did they show, nor did prosecution present, any evidence, of a board resolution and/or minutes of meeting of the accused as board members of Kingson International Trading Corporation (Kingson), approving the assailed importation with the corresponding supporting documents such as commercial invoice, bill of lading, packing list, and the like. It is common knowledge that regular business transactions such as importation of goods by any company engaged in trading are normally handled by the officer in charge of procurement, purchasing or supply of said goods. And said transactions do not require any prior board approval. Hence, in the case at hand, except for accused Alicia O. Fernandez, who is the Import/Export Manager and Corporate Secretary of Kingson, the rest of the accused, cannot be assumed to have knowingly consented to the importation of misdeclared and misclassified goods in flagrant violation of Section 3602 of the TCCP.

Let it be clear that I adhere to the guilty verdict imposed on Alicia O. Fernandez, who as Kingson's import/export manager, took the task of filling up the import entry with false information and under declarations when compared with the actual value of the imported steel products as clearly established by the evidence on record.

My opposition centers on the finding that the rest of the accused, i.e., Anthony Joey S. Tan, Reynaldo V. Cesa and Edgardo V. Martinez, are likewise guilty on the ground that all of them (including Alicia O. Fernandez), conspired with one another to commit the crimes described in Sections 3602 and 2503 of the TCCP.

It is well-established that for conspiracy to exist, it is essential that there must be a conscious design to commit an offense.[3] Conspiracy is the product of intentionality on the part of the cohorts. [4] It is necessary that a conspirator should have

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[3] Supra.
[4] Rosendo H. Escara vs. People of the Philippines, G.R. No, 164921, July 8, 2005.

performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed.[5]

After an astute re-examination of the records of this case, the undersigned believes that the prosecution failed to present evidence as to the complicity of the accused (Martinez, Cesa and Martinez) in the crime described in the Information dated March 25, 2009.

Insofar as the other accused are concerned, all that the prosecution was able to prove is that they were the corporate officers of Kingson as evidenced by the General Information Sheet (GIS) filed by Kingson with the Securities and Exchange Commission (SEC) as well as its Amended Articles of Incorporation and By-Laws. Other than these corporate documents, the undersigned observes that the prosecution failed to present any other evidence that would establish the conduct of the accused which would signify that there was a conscious, criminal design among them to commit the crime charged.

I take exception to the position taken by the majority that the absence of evidence that the responsible corporate officers repudiated the unlawful acts already committed constitute circumstantial evidence confirming their guilt. Such position goes against the well-entrenched principle in criminal law that the burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[6]

Further, the fact that the MOA to Sell was amended as a result of the meeting by the accused/corporate officers does not point to their complicity and awareness of the fraud committed in importing the subject goods. The amendment pertained to the correction of the designation of Jeffrey Co, as President of Kingson, and not the description of the subject goods. Besides this MOA to Sell, is a secondary transaction, independent and separate from the original transaction of importation, which is the subject of forfeiture by the Bureau of Customs.

[5] Pecho vs. People of the Philippines. G.R. No. 111399. September 27, 1996.
[6] Guilbemer Franco vs. People of the Philippines, G.R. No. 191185, February 1, 2016.

The presumption of innocence of an accused in a criminal case is a basic constitutional principle and the prosecution has the burden of proving otherwise.[7]

My conclusion is that the evidence presented by the prosecution is weak and cannot be used to establish the guilt of the accused, except for Alicia O. Fernandez. There is reasonable doubt, therefore the accused must be acquitted. When guilt is not proven with moral certainty, exoneration must be granted as a matter of right.[8]

In view of the foregoing, I vote for the **ACQUITTAL** of the accused **ANTHONY JOEY S. TAN, REYNALDO V. CESA AND EDGARDO V. MARTINEZ** for failure of the prosecution to prove their guilt beyond reasonable doubt and **AFFIRM**, the verdict of guilty against **ALICIA O. FERNANDEZ**.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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[7] People of the Philippines vs. Zafra Maraorao y Macabalang, G.R. No. 174369, June 20, 2012.
[8] Violeta Bahilidad vs. People of the Philippines, G.R. No. 185195, March 17, 2010.